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EPIC GAMES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHNNY DOE, a minor, by and through his
Guardian, JANE DOE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

EPIC GAMES, INC., a North Carolina
corporation,

Defendant.

Case No. 4:19-cv-3629

Hon. Yvonne Gonzalez Rogers

**DECLARATION OF JOHN
FARNSWORTH**

Action Filed: June 21, 2019

Hearing Date: October 1, 2019

Time: 2:00 p.m.

Courtroom: 1

Trial Date: None set

1 I, JOHN FARNSWORTH, declare:

2 1. I am a resident of North Carolina and over the age of eighteen (18) years of age. I
3 am a Vice President at Epic Games, Inc. ("Epic Games"). I have worked for Epic Games since
4 2009. I have personal knowledge of the facts stated herein and I am otherwise competent to
5 testify. I submit this declaration in support of Epic Games' Motion to Compel Arbitration or to
6 Transfer this case, and Epic Games' Motion to Dismiss

7 **I. Background**

8 2. Epic Games, which developed and continues to develop the global hit video game
9 *Fortnite*, is headquartered in Cary, North Carolina. Epic Games was incorporated in Maryland in
10 1993.

11 3. Epic Games' senior leadership team works principally at the Cary, North Carolina
12 headquarters or at nearby facilities, as do hundreds of other employees.

13 4. Plaintiffs' Complaint concerns the marketing of certain in-game items available to
14 *Fortnite* players and Epic Games' refund policies with respect to those items.

15 5. All of the Epic Games employees involved in the relevant decisions concerning
16 these issues, and to all of the business practices of Epic Games referenced in the Complaint, work
17 in or near the Cary, North Carolina headquarters.

18 6. Epic Games' records that are potentially relevant to these issues are stored at Epic
19 Games' headquarters.

20 7. Epic Games has a facility in Larkspur, California, which houses approximately 50
21 employees. None of the employees who work from the Larkspur location are involved in policy-
22 making on any subject, nor is any a decision-maker as to any of Epic Games' marketing or refund
23 policies at issue in Plaintiffs' Complaint.

24 **II. The *Fortnite* End User License Agreement**

25 8. From the time of *Fortnite*'s launch in the summer of 2017, all users had to
26 affirmatively agree to the *Fortnite* End User License Agreement ("EULA") before they could
27 begin playing the game (in any mode and on any platform).

1 9. Every version of the *Fortnite* EULA in effect from the time the game launched in
2 the summer of 2017 called for non-arbitrable disputes to be heard in North Carolina and governed
3 by North Carolina law.

4 10. When someone downloads the *Fortnite* software and wishes to begin playing, and
5 the time comes for the person to accept the EULA as a condition of playing, the EULA is
6 displayed on-screen for the user. The user must affirmatively accept the agreement by checking a
7 box that reads, "I have read and agree with the End User License Agreement." After clicking that
8 box, the user must confirm a second time by clicking an "Accept" button before playing.

9 11. Following the launch of *Fortnite*, Epic Games has periodically updated the EULA.
10 Epic Games advised users that it may update the EULA at any time: "Epic may issue an amended
11 Agreement...at any time in its discretion by posting the amended Agreement...on its website or by
12 providing you with digital access to amended versions...when you next access the Software." The
13 EULA advised persons accepting it that "if any amendment to this Agreement...is not acceptable
14 to you, you may terminate this Agreement and must stop using the Software."

15 12. Epic Games last updated the EULA in March 2019. This version of the EULA
16 included a binding, individual arbitration agreement, which Epic Games prominently called out at
17 the top of the updated agreement.

18 13. Epic Games displayed the updated EULA to all users who logged on to play
19 *Fortnite* on or after March 15, 2019. A screen shot of that display appears on the next page. This
20 screen shot shows the first sections of the amended EULA, including a boldfaced, all-capitalized
21 statement about the addition of an arbitration requirement for dispute resolution and users' time-
22 limited right to opt out of the mandatory arbitration requirement.

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Fortnite® End User License Agreement

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of Epic's Software, including any Services you access or purchases you make through the Software. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, you may not download or use this Software.

In particular, we want to highlight some important terms, policies, and procedures in this Agreement. By accepting this Agreement:

1. You are also agreeing to other Epic rules and policies that are expressly incorporated into this Agreement. Please read them carefully:
 - Our Privacy Policy explains what information we collect from you and how we protect it.
 - Our Fan Content Policy explains what you can do with Epic's Intellectual Property in the content you create.
 - Our Terms of Service explain the rules for our websites.
2. You grant Epic a license to use whatever content you create using the Service. You can find more information in the User Generated Content section below.
3. You and Epic agree to resolve disputes between us in individual arbitration (not in court). We believe the alternative dispute-resolution process of arbitration will resolve any dispute fairly and more quickly and efficiently than formal court litigation. Section 12 explains the process in detail. We've put this up front (and in caps) because it's important:

THIS AGREEMENT CONTAINS A BINDING, INDIVIDUAL ARBITRATION AND CLASS-ACTION WAIVER PROVISION. IF YOU ACCEPT THIS AGREEMENT, YOU AND EPIC AGREE TO RESOLVE DISPUTES IN BINDING, INDIVIDUAL ARBITRATION AND GIVE UP THE RIGHT TO GO TO COURT INDIVIDUALLY OR AS PART OF A CLASS ACTION, AND EPIC AGREES TO PAY YOUR ARBITRATION COSTS FOR ALL DISPUTES OF UP TO \$10,000 THAT ARE MADE IN GOOD FAITH [SEE SECTION 12]. YOU HAVE A TIME-LIMITED RIGHT TO OPT OUT OF THIS WAIVER.

TO ENTER INTO THIS LICENSE AGREEMENT, YOU MUST BE AN ADULT OF THE LEGAL AGE OF MAJORITY IN YOUR COUNTRY OF RESIDENCE. YOU ARE LEGALLY AND FINANCIALLY RESPONSIBLE

☐ I have read and agree with the End User License Agreement

Accept

Complete later?

Dismiss

14.

To

proceed with playing the game, the user was required to first check the box that states "I have read and agree with the End User License Agreement," after which they were required to click the "Accept" button:

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Fortnite® End User License Agreement

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of Epic's Software, including any Services you access or purchases you make through the Software. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, you may not download or use this Software.

In particular, we want to highlight some important terms, policies, and procedures in this Agreement. By accepting this Agreement:

1. You are also agreeing to other Epic rules and policies that are expressly incorporated into this Agreement. Please read them carefully:
 - Our Privacy Policy explains what information we collect from you and how we protect it.
 - Our Fan Content Policy explains what you can do with Epic's Intellectual Property in the content you create.
 - Our Terms of Service explain the rules for our websites.
2. You grant Epic a license to use whatever content you create using the Service. You can find more information in the User Generated Content section below.
3. You and Epic agree to resolve disputes between us in individual arbitration (not in court). We believe the alternative dispute-resolution process of arbitration will resolve any dispute fairly and more quickly and efficiently than formal court litigation. Section 12 explains the process in detail. We've put this up front (and in caps) because it's important:

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TO ENTER INTO THIS LICENSE AGREEMENT, YOU MUST BE AN ADULT OF THE LEGAL AGE OF MAJORITY IN YOUR COUNTRY OF RESIDENCE. YOU ARE LEGALLY AND FINANCIALLY RESPONSIBLE

☒ I have read and agree with the End User License Agreement

Accept

Complete later?

Dismiss

III. The Doe Account Accepted The EULA When Johnny Doe's *Fortnite* Account Was Created

15. Plaintiffs did not disclose the true identity of Plaintiff "Johnny Doe" to Epic Games until July 17, 2019. Even then, they disclosed only Johnny Doe's and Jane Doe's names, not their address or any other identifying information. Plaintiffs refused to disclose even just the

1 names to Epic Games unless and until Epic Games agreed to onerous conditions, including that
 2 no more than three non-attorney employees of Epic Games could learn the names, and that Epic
 3 Games had to advise Plaintiffs of the names and titles of these three employees. These conditions
 4 have hampered Epic Games' ability to investigate Plaintiffs' claims.

5 16. So that I may submit this declaration on the public record, I will use the "Doe"
 6 pseudonyms in describing the information Epic Games has learned about "Johnny Doe's"
 7 creation of a *Fortnite* account and the account's acceptance of the original and amended *Fortnite*
 8 EULA.

9 17. Epic Games' records reflect that on March 4, 2018 at 19:02 Coordinated Universal
 10 Time ("UTC"), a *Fortnite* account (the "Doe Account") was created using Johnny Doe's email
 11 address as contact information. The account was created using a PlayStation 4 device. A user of
 12 the account, at this same time, affirmatively agreed to the *Fortnite* EULA by checking the "agree"
 13 box and clicking the "accept" button in the manner described above. Epic Games has a record of
 14 the Internet Protocol ("IP") address from which the account was created. I can provide that IP
 15 address information to Plaintiffs and/or the Court if necessary, but I am omitting it from my
 16 declaration in order to avoid disclosing any personal information about the "Doe" Plaintiffs.

17 18. A copy of the EULA accepted by the Doe Account on March 4, 2018, is attached
 18 hereto as Exhibit A.

19 19. Epic Games' records reflect that a user of the Doe Account soon after set up two
 20 different payment profiles for in-game purchases. One used a PayPal account associated with
 21 Johnny Doe's email address that charged a credit card belonging to Jane Doe. The other used
 22 Jane Doe's Visa Card. Neither payment method was a "gift card."

23 20. Epic Games' records further reflect that, on June 7, 2019, at 6:13 UTC, a user
 24 logged into the Doe Account from the same IP address used to create the Doe Account and
 25 accepted the updated version of the *Fortnite* EULA—including its mandatory arbitration
 26 provision—by checking the "agree" box and clicking the "accept" button in the manner described
 27

1 above. The EULA was displayed on-screen to the user as shown above, and the user was required
2 to accept the agreement to continue playing *Fortnite*.

3 21. A copy of the EULA accepted by the Doe Account on June 7, 2019 is attached
4 hereto as Exhibit B.

5 22. Neither Johnny Doe nor Jane Doe submitted a request to opt out of the arbitration
6 requirement by July 7, 2019. Even though an opt-out after that date would have been untimely,
7 Epic Games has not received an opt-out for the Doe Account as of the date of this declaration.
8

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct. Executed this 26 day of August 2019 in Cary, North Carolina.
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14 JOHN FARNSWORTH
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Exhibit A

Fortnite® End User License Agreement

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of the Software, including any Services you access or purchases you make through the Software. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, please do not download or use this Software.

Please review Epic's Privacy Policy found at <https://www.epicgames.com/privacypolicy>, which also governs your use of the Services, to understand our practices. In addition, your use of the Services is also governed by Epic's Terms of Service, which may be found at <https://www.epicgames.com/tos>. By downloading or using the Software, you also agree to Epic's Terms of Service and acknowledge that you have read Epic's Privacy Policy.

Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 16.

If your primary residence is in the United States of America, your agreement is with Epic Games, Inc. If it is not in the United States of America, your agreement is with Epic Games International S.à r.l., acting through its Swiss branch.

1. License Grant

Epic grants you a personal, non-exclusive, non-transferable, non-sublicensable limited right and license to install and use one copy of the Software on a device for your personal entertainment use (the "**License**"). The rights that Epic grants you under the License are subject to the terms of this Agreement, and you may only make use of the License if you comply with all applicable terms.

The License becomes effective on the date you accept this Agreement. The Software is licensed, not sold, to you under the License. The License does not grant you any title or ownership in the Software.

2. License Conditions

You may not do any of the following with respect to the Software or any of its parts: (a) use it commercially or for a promotional purpose; (b) use it on more than one device at a time; (c) copy, reproduce, distribute, display, or use it in a way that is not expressly authorized in this Agreement; (d) sell, rent, lease, license, distribute, or otherwise transfer it; (e) reverse engineer, derive source code from, modify, adapt, translate, decompile, or disassemble it or make derivative works based on it; (f) remove, disable, circumvent, or modify any proprietary notice or label or security technology included in it; (g) create, develop, distribute, or use any unauthorized software programs to gain advantage in any online or other game modes; (h) use it to infringe or violate the rights of any third party, including but not limited to any intellectual property, publicity, or privacy rights; (i) use, export, or re-export it in violation of any applicable

law or regulation; or (j) behave in a manner which is detrimental to the enjoyment of the Software by other users as intended by Epic, in Epic's sole judgment, including but not limited to the following – harassment, use of abusive or offensive language, game abandonment, game sabotage, spamming, social engineering, or scamming.

The Software may contain Cheat Detection software or features or you may be prompted to install Cheat Detection software during your installation of the Software. If you do not agree to install the Cheat Detection software or at any time remove or disable the Cheat Detection software or features, the License granted to you automatically terminates and you may not make use of the Software. The Software or the Cheat Detection software may collect and transmit details about your account, gameplay, and potentially unauthorized programs or processes in connection with Cheat Detection, subject to Epic's Privacy Policy. In the event that Cheats are identified, you agree that Epic may exercise any or all of its rights under this Agreement.

3. Updates and Patches

Epic may provide patches, updates, or upgrades to the Software that must be installed in order for you to continue to use the Software or Services. Epic may update the Software remotely without notifying you, and you hereby consent to Epic applying patches, updates, and upgrades. Epic may modify, suspend, discontinue, substitute, replace, or limit your access to any aspect of the Software or Services at any time. You acknowledge that your use of the Software or Services does not confer on you any interest, monetary or otherwise, in any aspect or feature of the Software or Services, including but not limited to any in-game rewards, achievements, character levels, Game Currency, or Content. You also acknowledge that any character data, game progress, game customization or other data related to your use of the Software or Services may cease to be available to you at any time without notice from Epic, including without limitation after a patch, update, or upgrade is applied by Epic. Epic does not have any maintenance or support obligations with respect to the Software or Services.

4. Game Currency and Content

Epic may offer you the ability to acquire licenses to in-game currency ("**Game Currency**") or Content, such as by: (a) purchasing a limited license to use Game Currency for a fee ("**Purchased Game Currency**"), (b) earning a limited license to use Game Currency by performing or accomplishing specific tasks in the Software, or (c) purchasing for a fee, exchanging Game Currency for, or earning a limited license to use Content. Also, Epic may facilitate the exchange of certain Content through the Software, in some cases for a fee. You may only use such Game Currency or Content if you pay the associated fee (if any). When you earn or pay the fee to obtain such Game Currency or Content, you are obtaining or purchasing from Epic the right to have your License include such Game Currency or Content. Regardless of any references Epic may make outside this Agreement to purchasing or selling Game Currency or Content, both Game Currency and Content are licensed, not sold, to you under the License. Use of an Epic Account Balance to purchase Game Currency or Content is subject to Epic's Terms of Service.

Neither Game Currency nor Content are redeemable for money or monetary value from Epic or any other person, except as otherwise required by applicable law. Game Currency and Content do not have an equivalent value in real currency and do not act as a substitute for real currency. Neither Epic nor any other person or entity has any obligation to exchange Game Currency or Content for anything of value, including, but not limited to, real currency. You agree that Epic may engage in actions that may impact the perceived value or purchase price, if applicable, of Game Currency and Content at any time, except as prohibited by applicable law.

All purchases of Purchased Game Currency and Content are final and are not refundable, transferable, or exchangeable under any circumstances, except as otherwise required by applicable law. Epic, in its sole discretion, may impose limits on the amount of Game Currency or Content that may be purchased, earned, accumulated, redeemed or otherwise used.

Except as otherwise prohibited by applicable law, Epic, in its sole discretion, has the absolute right to manage, modify, substitute, replace, suspend, cancel or eliminate Game Currency or Content, including your ability to access or use Game Currency or Content, without notice or liability to you. You may not transfer, sell, gift, exchange, trade, lease, sublicense, or rent Game Currency or Content except within the Software and as expressly permitted by Epic. Except as otherwise prohibited by applicable law, Epic reserves and retains all rights, title, and interest in and to the Game Currency and Content. The license to Game Currency and Content under the License will terminate upon termination of the License and as otherwise provided herein.

When you provide payment information to Epic or its authorized processor, you represent that you are an authorized user of the payment card, PIN, key, account or other payment method specified by you, and you authorize Epic to charge such payment method for the full amount of the transaction.

5. User Generated Content

Any content that you create, generate, or make available through the Software or the Services, including buildings, chat posts, character data, game customization, in-game constructions, and screenshots, shall be “UGC”. You hereby grant to Epic a non-exclusive, fully-paid, royalty-free, irrevocable, perpetual, transferable, and sublicensable license to use, copy, modify, adapt, distribute, and publicly display your UGC. You may not create, generate, or make available through the Software of the Services any UGC to which you do not have the right to grant Epic such license. In addition, you may not create, generate, or make available through the Software of the Services any UGC that is illegal or violates or infringes another’s rights, including intellectual property rights or privacy, publicity or moral rights. Epic reserves the right to take down any UGC in its discretion.

6. Feedback

If you provide Epic with any Feedback, you hereby grant Epic a non-exclusive, fully-paid, royalty-free, irrevocable, perpetual, transferable, sublicensable license to reproduce, distribute, modify, prepare derivative works based on, publicly perform, publicly display, make, have made, use, sell, offer to sell, import, and otherwise exploit that Feedback for any purposes, for all

current and future methods and forms of exploitation in any country. If any such rights may not be licensed under applicable law (such as moral and other personal rights), you hereby waive and agree not to assert all such rights. You understand and agree that Epic is not required to make any use of any Feedback that you provide. You agree that if Epic makes use of your Feedback, Epic is not required to credit or compensate you for your contribution. You represent and warrant that you have sufficient rights in any Feedback that you provide to Epic to grant Epic and other affected parties the rights described above. This includes but is not limited to intellectual property rights and other proprietary or personal rights.

7. Ownership/Third Party Licenses

Epic and its licensors own all title, ownership rights, and intellectual property rights in the Software and Services. Epic, Epic Games, Unreal, Unreal Engine, and Fortnite, and their respective logos, are trademarks or registered trademarks of Epic and its affiliates in the United States of America and elsewhere. All rights granted to you under this Agreement are granted by express license only and not by sale. No license or other rights shall be created hereunder by implication, estoppel, or otherwise.

The Software includes certain components provided by Epic's licensors. A list of credits and notices for third party components may be found in the game interface.

8. Disclaimers and Limitation of Liability

The Software (including any Game Currency and Content) and Services is provided on an “as is” and “as available” basis, “with all faults” and without warranty of any kind. Epic, its licensors, and its and their affiliates disclaim all warranties, conditions, common law duties, and representations (express, implied, oral, and written) with respect to the Software and Services, including without limitation all express, implied, and statutory warranties and conditions of any kind, such as title, non-interference with your enjoyment, authority, non-infringement, merchantability, fitness or suitability for any purpose (whether or not Epic knows or has reason to know of any such purpose), system integration, accuracy or completeness, results, reasonable care, workmanlike effort, lack of negligence, and lack of viruses, whether alleged to arise under law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing, Epic, its licensors, and its and their affiliates make no warranty that (1) the Software or Services will operate properly, (2) that the Software or Services will meet your requirements, (3) that the operation of the Software or Services will be uninterrupted, bug free, or error free in any or all circumstances, or (4) that any defects in the Software or Services can or will be corrected. Any warranty against infringement that may be provided in Section 2-312 of the Uniform Commercial Code or in any other comparable statute is expressly disclaimed. Epic, its licensors, and its and their affiliates do not guarantee continuous, error-free, virus-free, or secure operation of or access to the Software or Services. This paragraph will apply to the maximum extent permitted by applicable law.

To the maximum extent permitted by applicable law, neither Epic, nor its licensors, nor its or their affiliates, nor any of Epic's service providers (collectively, the "Epic Parties"), shall be liable in any way for any loss of profits or any indirect, incidental, consequential, special, punitive, or exemplary damages, arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services, or the delay or inability to use or lack of functionality of the Software or Services, even in the event of an Epic Party's fault, tort (including negligence), strict liability, indemnity, product liability, breach of contract, breach of warranty, or otherwise and even if an Epic Party has been advised of the possibility of such damages. Further, to the maximum extent permitted by applicable law, the aggregate liability of the Epic Parties arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services will not exceed the total amounts you have paid (if any) to Epic for the Software (including any Game Currency or Content) during the twelve (12) months immediately preceding the events giving rise to such liability. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.

Notwithstanding the foregoing, some countries, states, provinces or other jurisdictions do not allow the exclusion of certain warranties or the limitation of liability as stated above, so the above terms may not apply to you. Instead, in such jurisdictions, the foregoing exclusions and limitations shall apply only to the extent permitted by the laws of such jurisdictions. Also, you may have additional legal rights in your jurisdiction, and nothing in this Agreement will prejudice the statutory rights that you may have as a consumer of the Software or Services.

9. Indemnity

You agree to indemnify, pay the defense costs of, and hold Epic, its licensors, its and their affiliates, and its and their employees, officers, directors, agents, contractors, and other representatives harmless from all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs, and expert witnesses' fees) that arise from or in connection with (a) any claim that, if true, would constitute a breach by you of this Agreement or negligence by you, or (b) any act or omission by you in using the Software (including any Game Currency or Content) or Services. You agree to reimburse Epic on demand for any defense costs incurred by Epic and any payments made or loss suffered by Epic, whether in a court judgment or settlement, based on any matter covered by this Section 9.

If you are prohibited by law from entering into the indemnification obligation above, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation above.

10. Termination

Without limiting any other rights of Epic, this Agreement will terminate automatically without notice if you fail to comply with any of its terms and conditions. You may also terminate this

Agreement by deleting the Software. Upon any termination, the License will automatically terminate, you may no longer exercise any of the rights granted to you by the License, and you must destroy all copies of the Software in your possession.

Except to the extent required by law, all payments and fees are non-refundable under all circumstances, regardless of whether or not this Agreement has been terminated.

Sections 2, 5-13, and 15-17 will survive any termination of this Agreement.

11. Governing Law and Jurisdiction

You agree that this Agreement will be deemed to have been made and executed in the State of North Carolina, U.S.A., and any dispute will be resolved in accordance with the laws of North Carolina, excluding that body of law related to choice of laws, and of the United States of America. Any action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Superior Court of Wake County, State of North Carolina or the United States District Court for the Eastern District of North Carolina. You agree to the exclusive jurisdiction and venue of these courts. You waive any claim of inconvenient forum and any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract shall be construed against the drafter will not apply to this Agreement.

12. Class Action Waiver

You agree not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the Software (including any Game Currency or Content) or Services or this Agreement. You also agree not to seek to combine any action or arbitration related to the Software or Services or this Agreement with any other action or arbitration without the consent of all parties to this Agreement and all other actions or arbitrations.

13. U.S. Government Matters

The Software is a “Commercial Item” (as defined at 48 C.F.R. §2.101), consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” (as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable). The Software is being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to other licensees under this Agreement.

You represent and warrant to Epic that you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting” country, and that you are not listed on any U.S. Government list of prohibited or restricted parties.

14. Amendments of this Agreement

Epic may issue an amended Agreement, Terms of Service, or Privacy Policy at any time in its discretion by posting the amended Agreement, Terms of Service, or Privacy Policy on its website or by providing you with digital access to amended versions of any of these documents when you next access the Software. If any amendment to this Agreement, the Terms of Service, or Privacy Policy is not acceptable to you, you may terminate this Agreement and must stop using the Software. Your continued use of the Software will demonstrate your acceptance of the amended Agreement and Terms of Service as well as your acknowledgement that you have read the amended Privacy Policy.

15. No Assignment

You may not, without the prior written consent of Epic, assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement, and any attempt without that consent will be null and void. If restrictions on transfer of the Software in this Agreement are not enforceable under the law of your country, then this Agreement will be binding on any recipient of the Software. Epic may at any time assign, transfer, charge, or sub-contract all or any of its rights or obligations under this Agreement.

16. Definitions

As used in this Agreement, the following capitalized words have the following meanings:

“Cheat Detection” means functionality intended to identify Cheats.

“Cheats” means programs or other processes which may give players an unfair competitive advantage in the Software.

“Confidential Information” means any non-public information related to the Software, including without limitation information related to gameplay or other content, Game Currency, Content, the Services, your own feedback and comments, and the feedback or comments of any other licensee of the Software or any Epic representative.

“Content” means any virtual items or other content that Epic makes available for you to access or download through or in connection with the Software.

“Epic” means, depending on the location of your primary residence:

- a.** Epic Games, Inc., a Maryland Corporation having its principal business offices at Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A.; or
- b.** Epic Games International S.à r.l., a Luxembourg Société à Responsabilité Limitée, located at Atrium Business Park, 33 rue du Puits Romain, L8070 Bertrange, Grand-Duchy of Luxembourg, acting through its Swiss branch, having its principal business offices at Lindenstrasse 16, 6340 Baar, Switzerland.

“Feedback” means any feedback or suggestions that you provide to Epic regarding the Software, Services or other Epic products and services.

“Services” means any services made available to you through the Software, including services to acquire, maintain and use Game Currency and Content.

“Software” means the proprietary software application known as Fortnite, and any patches, updates, and upgrades to the application, and all related content and documentation made available to you by Epic under this Agreement, including but not limited to all software code, titles, themes, objects, characters, names, dialogue, catch phrases, locations, stories, artwork, animation, concepts, sounds, audio-visual effects, methods of operation, and musical compositions that are related to the application, and any copies of any of the foregoing. Software specifically includes all Game Currency and Content for which you have paid the associated fee or otherwise acquired a license under Section 4.

17. Miscellaneous

This Agreement and any document or information referred to in this Agreement constitute the entire agreement between you and Epic relating to the subject matter covered by this Agreement. All other communications, proposals, and representations with respect to the subject matter covered by this Agreement are excluded.

The original of this Agreement is in English; any translations are provided for reference purposes only. You waive any right you may have under the law of your country to have this Agreement written or construed in the language of any other country.

This Agreement describes certain legal rights. You may have other rights under the laws of your jurisdiction. This Agreement does not change your rights under the laws of your jurisdiction if the laws of your jurisdiction do not permit it to do so. Limitations and exclusions of warranties and remedies in this Agreement may not apply to you because your jurisdiction may not allow them in your particular circumstance. In the event that certain provisions of this Agreement are held by a court or tribunal of competent jurisdiction to be unenforceable, those provisions shall be enforced only to the furthest extent possible under applicable law and the remaining terms of this Agreement will remain in full force and effect.

Any act by Epic to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity.

You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated.

Epic’s obligations are subject to existing laws and legal process, and Epic may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.

Exhibit B

FORTNITE® END USER LICENSE AGREEMENT

Please read this Agreement carefully. It is a legal document that explains your rights and obligations related to your use of Epic's Software, including any Services you access or purchases you make through the Software. By downloading or using the Software, or by otherwise indicating your acceptance of this Agreement, you are agreeing to be bound by the terms of this Agreement. If you do not or cannot agree to the terms of this Agreement, you may not download or use this Software.

In particular, we want to highlight some important terms, policies, and procedures in this Agreement. By accepting this Agreement:

1. You are also agreeing to other Epic rules and policies that are expressly incorporated into this Agreement. Please read them carefully:

Our [Privacy Policy](#) explains what information we collect from you and how we protect it.

Our [Fan Content Policy](#) explains what you can do with Epic's Intellectual Property in the content you create.

Our [Terms of Service](#) explain the rules for our websites.

2. You grant Epic a license to use whatever content you create using the Service. You can find more information in the User Generated Content section below.

3. You and Epic agree to resolve disputes between us in individual arbitration (not in court). We believe the alternative dispute-resolution process of arbitration will resolve any dispute fairly and more quickly and efficiently than formal court litigation. Section 12 explains the process in detail. We've put this up front (and in caps) because it's important:

THIS AGREEMENT CONTAINS A BINDING, INDIVIDUAL ARBITRATION AND CLASS-ACTION WAIVER PROVISION. IF YOU ACCEPT THIS AGREEMENT, YOU AND EPIC AGREE TO RESOLVE DISPUTES IN BINDING, INDIVIDUAL ARBITRATION AND GIVE UP THE RIGHT TO GO TO COURT INDIVIDUALLY OR AS PART OF A CLASS ACTION, AND EPIC AGREES TO PAY YOUR ARBITRATION COSTS FOR ALL DISPUTES OF UP TO \$10,000 THAT ARE MADE IN GOOD FAITH (SEE SECTION 12). YOU HAVE A TIME-LIMITED RIGHT TO OPT OUT OF THIS WAIVER.

TO ENTER INTO THIS LICENSE AGREEMENT, YOU MUST BE AN ADULT OF THE LEGAL AGE OF MAJORITY IN YOUR COUNTRY OF RESIDENCE. YOU ARE LEGALLY AND FINANCIALLY RESPONSIBLE FOR ALL ACTIONS USING OR ACCESSING OUR SOFTWARE, INCLUDING THE ACTIONS OF ANYONE YOU ALLOW TO ACCESS TO YOUR ACCOUNT. YOU AFFIRM THAT YOU HAVE REACHED THE LEGAL AGE OF MAJORITY, UNDERSTAND AND ACCEPT THIS AGREEMENT (INCLUDING ITS DISPUTE RESOLUTION TERMS). IF YOU ARE UNDER THE LEGAL AGE OF MAJORITY, YOUR PARENT OR LEGAL GUARDIAN MUST CONSENT TO THIS AGREEMENT.

Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined below in Section 16.

If your primary residence is in the United States of America, your agreement is with Epic Games, Inc. If it is not in the United States of America, your agreement is with Epic Games International S.à r.l., acting through its Swiss branch.

1. License Grant

Epic grants you a personal, non-exclusive, non-transferable, non-sublicensable limited right and license to install and use the Software on compatible devices you own or control for your personal entertainment use (the “**License**”). The rights that Epic grants you under the License are subject to the terms of this Agreement, and you may only make use of the License if you comply with all applicable terms.

The License becomes effective on the date you accept this Agreement. The Software is licensed, not sold, to you under the License. The License does not grant you any title or ownership in the Software.

2. License Conditions

You may not do or attempt to do any of the following with respect to the Software or any of its parts: (a) use it commercially or for a promotional purpose except as Epic expressly authorizes; (b) copy, reproduce, distribute (including via a network server), display, or use it in a way that is not expressly authorized in this Agreement; (c) sell, rent, lease, license, distribute, or otherwise transfer it; (d) reverse engineer, derive source code from, modify, adapt, translate, decompile, or disassemble it or make derivative works based on it; (e) remove, disable, circumvent, or modify any proprietary notice or label or security technology included in it; (f) create, develop, distribute, or use any unauthorized software programs to gain advantage in any online or other game modes; (g) use it to infringe or violate the rights of any third party, including but not limited to any intellectual property, publicity, or privacy rights; (h) use, export, or re-export it in violation of any applicable law or regulation; or (i) behave in a manner which is detrimental to the enjoyment of the Software by other users as intended by Epic, in Epic’s sole judgment, including but not limited to the following – harassment, use of abusive or offensive language, game abandonment, game sabotage, spamming, social engineering, scamming, running or using methods which are not authorized by Epic and which interfere with the outcome and/or the course of the Software (including Cheats, bots, scripts, or mods not expressly authorized by Epic) by giving you and/or another user an advantage over other players who do not use such methods, or making or otherwise contributing to such unauthorized software.

The Software may contain Cheat Detection software or features or you may be prompted to install Cheat Detection software during your installation of the Software. If you do not agree to install the Cheat Detection software or at any time remove or disable the Cheat Detection software or features, the License granted to you automatically terminates and you may not make use of the Software. The Software or the Cheat Detection software may collect and transmit details about your account, gameplay, and potentially unauthorized programs or processes in

connection with Cheat Detection, subject to Epic's Privacy Policy. In the event that Cheats are identified, you agree that Epic may exercise any or all of its rights under this Agreement.

3. Updates and Patches

Epic may provide patches, updates, or upgrades to the Software that must be installed in order for you to continue to use the Software or Services. Epic may update the Software remotely without notifying you, and you hereby consent to Epic applying patches, updates, and upgrades. Epic may modify, suspend, discontinue, substitute, replace, or limit your access to any aspect of the Software or Services at any time. You acknowledge that your use of the Software or Services does not confer on you any interest, monetary or otherwise, in any aspect or feature of the Software or Services, including but not limited to (where applicable) any in-game rewards, trophies, achievements, character levels, Game Currency, or Content. You also acknowledge that any character data, game progress, game customization or other data related to your use of the Software or Services may cease to be available to you at any time without notice from Epic, including without limitation after a patch, update, or upgrade is applied by Epic. Epic does not have any maintenance or support obligations with respect to the Software or Services.

4. Game Currency and Content

Epic may offer you the ability to acquire licenses to in-game currency ("**Game Currency**") or Content, such as by: (a) purchasing a limited license to use Game Currency for a fee ("**Purchased Game Currency**"), (b) earning a limited license to use Game Currency by performing or accomplishing specific tasks in the Software, or (c) purchasing for a fee, exchanging Game Currency for, or earning a limited license to use Content. Also, Epic may facilitate the exchange of certain Content through the Software, in some cases for a fee. You may only use such Game Currency or Content if you pay the associated fee (if any). When you earn or pay the fee to obtain such Game Currency or Content, you are obtaining or purchasing from Epic the right to have your License include such Game Currency or Content. Regardless of any references Epic may make outside this Agreement to purchasing or selling Game Currency or Content, both Game Currency and Content are licensed, not sold, to you under the License. Use of an Epic Account Balance to purchase Game Currency or Content is subject to Epic's Terms of Service.

Neither Game Currency nor Content are redeemable for money or monetary value from Epic or any other person, except as otherwise required by applicable law. Game Currency and Content do not have an equivalent value in real currency and do not act as a substitute for real currency. Neither Epic nor any other person or entity has any obligation to exchange Game Currency or Content for anything of value, including, but not limited to, real currency. You agree that Epic may engage in actions that may impact the perceived value or purchase price, if applicable, of Game Currency and Content at any time, except as prohibited by applicable law.

All purchases of Purchased Game Currency and Content are final and are not refundable, transferable, or exchangeable under any circumstances, except as otherwise required by applicable law. Epic, in its sole discretion, may impose limits on the amount of Game Currency or Content that may be purchased, earned, accumulated, redeemed or otherwise used.

Except as otherwise prohibited by applicable law, Epic, in its sole discretion, has the absolute right to manage, modify, substitute, replace, suspend, cancel or eliminate Game Currency or Content, including your ability to access or use Game Currency or Content, without notice or liability to you. You may not transfer, sell, gift, exchange, trade, lease, sublicense, or rent Game Currency or Content except within the Software and as expressly permitted by Epic.

Except as otherwise prohibited by applicable law, Epic reserves and retains all rights, title, and interest, property or otherwise, in and to the Game Currency and Content. The license to Game Currency and Content under the License will terminate upon termination of the License and as otherwise provided herein.

When you provide payment information to Epic or its authorized processor, you represent that you are an authorized user of the payment card, PIN, key, account or other payment method specified by you, and you authorize Epic to charge such payment method for the full amount of the transaction.

5. User Generated Content

Epic may provide features through the Software or the Services that allow You to create, develop, modify, or contribute Content (“UGC”) and to upload, publish, or otherwise make available UGC to some or all users of the Services. These features may also allow you to interact with, manipulate, and change UGC in whole or in part. Epic may modify, limit, or discontinue certain features of the Service without notice or liability to you.

“UGC” includes without limitation buildings, chat posts, character data, game customization, in-game constructions, replays, cinematics, scripts and programs, modes, gameplay, experiences, interactive features, and screenshots, music, sounds, sound recordings (and the musical works embodied therein) audiovisual combinations, musical works, animations, and other types of works (standalone or in combination).

Subject to the rights and licenses You grant in this Agreement, you retain whatever rights that you may have in your UGC. Your rights in UGC only extend to the new, original content you create as part of your UGC and does not extend to or grant any rights to the Services, Software, Content created or made available by third-parties, or Content made available by Epic through the Software or Services.

License to Epic. If You make or have made available any UGC in the Services, You give Epic permission to host, copy, import, store, modify, adapt, display, publicly perform (including by means of digital audio transmissions), reproduce (and make mechanical reproductions of musical works embodied in sound recordings), create derivative works of (including synchronize to visual images), publicly display, transfer, sublicense, and distribute (collectively “Use”) that UGC, in whole or in part, including for commercial publicity and marketing purposes, in any country. This permission is perpetual and irrevocable and applies to any media, platform, or channel in connection with the Software and Services.

The rights you grant to Epic in this Section are provided on a through-to-the-audience basis,

which means the owners or operators of third-party services will not have any separate liability to you or any other third-party for UGC provided to or used on such third-party services via the Service. Epic needs these permissions in order to make your UGC available to players as part of the Services (i.e., in-game), and to make it available to streamers and content creators off of the Services (e.g., for use on other platforms). These rights need to be irrevocable because of the many channels in which UGC is distributed by us and others after it's created.

You understand that You are not entitled to receive any compensation, fees, consideration, or other remuneration in connection with your UGC for any reason, including Epic's exercise of the rights You grant to Epic in this Section and that Epic is not obligated to exercise the rights You grant.

Musical Works. Epic may, in its sole discretion, choose to make available sound recordings and the musical works embodied in the sound recordings ("Licensed Music") in connection with UGC. If Epic makes available Licensed Music for use in your UGC, Epic grants you a non-exclusive, personal, limited, revocable, non-transferable license to: (a) synchronize the Licensed Music into UGC during the period of time that the Licensed Music is made available through the Services, and (b) play, listen, and interact with UGC containing Licensed Music solely through the Services.

Your modifications (e.g., edits, use of a portion of) the Licensed Music to synchronize into the UGC are considered derivative works included in the definition of Licensed Music, the rights to which are retained by Epic and its licensors.

Special Rules for Recording Artists. If you are a composer or author of a musical work and are (a) affiliated with or a member of a performing-rights organization ("PRO"), (b) under contract with a record label, or (c) have assigned your rights to a music publisher, then you must notify the interested party of the royalty-free license you grant through this Agreement to Epic. You are solely responsible for ensuring your compliance with the relevant party's reporting or contractual obligations, and (if applicable) obtaining the consent of that party to grant the royalty-free license(s) in this Agreement, including if you create any new recordings through the Service that your label may attempt to claim.

You represent and warrant that any UGC containing Licensed Music is not subject to and Epic has no obligation to pay royalties to any third party, including without limitation a sound recording copyright owner (e.g., a record label), a musical work copyright owner (e.g., a music publisher), a PRO (e.g., ASCAP, BMI, SESAC, etc.), a sound recording PRO, any unions or guilds, or other third parties.

Epic does not allow intellectual-property infringement activities through the Software or the Services. You may not and agree not to create, generate, or make available through the Software or the Services any UGC to which you do not have the right to grant Epic such license in all of the elements (including the Licensed Music) of the UGC.

If you do choose to create, generate, or make available your UGC through the Software or Services, You are solely responsible for your UGC and represent and warrant that:

(a) you are the creator and owner of, and have all the necessary licenses and rights to use and authorize Epic to exploit the license granted above;

(b) your UGC, and Epic's use of the UGC as contemplated under this Agreement, will not infringe or violate any third-party rights, including copyright, trademark, patent, trade secret, moral rights, or the rights of privacy or publicity;

(c) Epic does not need to obtain any further licenses, provide attribution, or pay royalties or other compensation to any third parties; and

(d) Epic's use of your UGC will not violate any third-party contract or cause Epic to violate any applicable laws or regulations.

You are responsible for your UGC, so please don't make objectionable content available on or through the Services. If you do, we may have to take it down. Epic may, but is under no obligation, to edit or control any UGC You or others make available through the Software or the Services. Epic may at any time screen, remove, delete, edit, block, or refuse to publish UGC that violates this Agreement or is otherwise objectionable as determined in Epic's sole discretion and without prior notice or any liability to You or any third party. If You provide UGC, You may only use the tools that Epic provides through the normal functionality of the Service to remove or modify that specific type of UGC.

You understand that you may be exposed to UGC from a variety of sources when using the Software or the Services and acknowledge that UGC may be inaccurate, offensive, indecent, or otherwise objectionable. You agree that Epic shall not be responsible or liable for your or others' UGC.

To the fullest extent permitted by law, You waive and agree to waive all rights of authorship, paternity, attribution, integrity, disclosure, withdrawal, and any other rights that are known or referred to as "moral rights", "artist's rights", "droit moral", or other similar rights, recognized under any legal or equitable theory of any country or under any treaty, regardless of whether that right is referred to as a "moral right" (collectively "Moral Rights") in and to your UGC. You further knowingly and irrevocably agree to not exercise any Moral Rights in and to your UGC that You have not waived in any manner that interferes with any exercise of granted rights. You waive and agree not to assert your Moral Rights even if your UGC is altered or changed in a manner not agreeable to you.

6. Feedback

If you provide Epic with any Feedback, you hereby grant Epic a non-exclusive, fully paid, royalty-free, worldwide, perpetual, irrevocable, sublicensable, transferable, and assignable license to use, reproduce, distribute, modify, adapt, prepare derivative works based on, publicly perform, publicly display, make, have made, use, sell, offer to sell, import, and otherwise exploit any and all Feedback for any purposes, for all current and future methods and forms of exploitation. "Feedback" means suggestions, comments, ideas, and all other types of

information, including software and code, that you provide, publish, or otherwise communicate directly or indirectly (including your employees, agents, contractors, or representatives) to Epic or its agents that relates to the Services or Software. If any such rights may not be licensed under applicable law (such as moral and other personal rights), you hereby waive and agree not to assert any such rights. You understand and agree that Epic is not required to make any use of any Feedback that you provide. You agree that if Epic makes use of your Feedback, Epic is not required to credit or compensate you for your contribution. You represent and warrant that you have sufficient rights in any Feedback that you provide to Epic to grant Epic and other affected parties the rights described above. This includes but is not limited to intellectual-property rights and other proprietary or personal rights.

7. Ownership/Third Party Licenses

Epic and its licensors own all title, ownership rights, and intellectual property rights in the Software and Services. Features may be made available to you via the Software and Services that provide prefabricated templates or in-game items to use in connection with your UGC (defined below), however your use of a template does not give you any copyrights or other ownership in the template. Epic, Epic Games, Unreal, Unreal Engine, and Fortnite, and their respective logos, are trademarks or registered trademarks of Epic and its affiliates in the United States of America and elsewhere. All rights granted to you under this Agreement are granted by express license only and not by sale. No license or other rights shall be created hereunder by implication, estoppel, or otherwise.

The Software includes certain components provided by Epic's licensors. A list of credits and notices for third party components may be found in the game interface.

8. Disclaimers and Limitation of Liability

Nothing in this Agreement will prejudice the statutory rights that you may have as a consumer of the Software or Services. Some countries, states, provinces or other jurisdictions do not allow the exclusion of certain warranties or the limitation of liability as stated in this section, so the below terms may not fully apply to you. Instead, in such jurisdictions, the exclusions and limitations below shall apply only to the extent permitted by the laws of such jurisdictions.

The Software (including any Game Currency and Content) and Services is provided on an "as is" and "as available" basis, "with all faults" and without warranty of any kind. Epic, its licensors, and its and their affiliates disclaim all warranties, conditions, common law duties, and representations (express, implied, oral, and written) with respect to the Software and Services, including without limitation all express, implied, and statutory warranties and conditions of any kind, such as title, non-interference with your enjoyment, authority, non-infringement, merchantability, fitness or suitability for any purpose (whether or not Epic knows or has reason to know of any such purpose), system integration, accuracy or completeness, results, reasonable care, workmanlike effort, lack of negligence, and lack of viruses, whether alleged to arise under law, by reason of custom or usage in the trade, or by course of dealing. Without limiting the generality of the foregoing,

Epic, its licensors, and its and their affiliates make no warranty that (1) the Software or Services will operate properly, (2) that the Software or Services will meet your requirements, (3) that the operation of the Software or Services will be uninterrupted, bug free, or error free in any or all circumstances, or (4) that any defects in the Software or Services can or will be corrected. Any warranty against infringement that may be provided in Section 2-312 of the Uniform Commercial Code or in any other comparable statute is expressly disclaimed. Epic, its licensors, and its and their affiliates do not guarantee continuous, error-free, virus-free, or secure operation of or access to the Software or Services. This paragraph will apply to the maximum extent permitted by applicable law.

To the maximum extent permitted by applicable law, neither Epic, nor its licensors, nor its or their affiliates, nor any of Epic's service providers (collectively, the "Epic Parties"), shall be liable in any way for any loss of profits or any indirect, incidental, consequential, special, punitive, or exemplary damages, arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services, or the delay or inability to use or lack of functionality of the Software or Services, even in the event of an Epic Party's fault, tort (including negligence), strict liability, indemnity, product liability, breach of contract, breach of warranty, or otherwise and even if an Epic Party has been advised of the possibility of such damages. Further, to the maximum extent permitted by applicable law, the aggregate liability of the Epic Parties arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services will not exceed the total amounts you have paid (if any) to Epic for the Software (including any Game Currency or Content) during the twelve (12) months immediately preceding the events giving rise to such liability. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.

9. Indemnity

This section only applies to the extent permitted by applicable law. If you are prohibited by law from entering into the indemnification obligation below, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation below.

You agree to indemnify, pay the defense costs of, and hold Epic, its licensors, its and their affiliates, and its and their employees, officers, directors, agents, contractors, and other representatives harmless from all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs, and expert witnesses' fees) that arise from or in connection with (a) any claim that, if true, would constitute a breach by you of this Agreement or negligence by you, (b) any act or omission by you in using the Software (including any Game Currency or Content) or Services, or (c) any claim of infringement or violation of any third-party intellectual property rights arising from Epic's use of your UGC or Feedback as provided under Sections 5 or 6 of this Agreement. You agree to reimburse Epic on demand for any defense costs incurred by Epic and any payments made or loss suffered by Epic, whether in a court judgment or settlement, based on any matter covered by this Section 9.

10. Termination

Without limiting any other rights of Epic, this Agreement will terminate automatically without notice if you fail to comply with any of its terms and conditions. You may also terminate this Agreement by deleting the Software from all devices on which you've installed it. Upon any termination, the License will automatically terminate, you may no longer exercise any of the rights granted to you by the License, and you must destroy all copies of the Software in your possession.

Except to the extent required by law, all payments and fees are non-refundable under all circumstances, regardless of whether or not this Agreement has been terminated.

Sections 2, 5-13, and 15-17 will survive any termination of this Agreement.

11. Governing Law and Jurisdiction

This Agreement is entered into in the State of North Carolina, U.S.A., and shall be governed by, and construed in accordance with, the laws of the State of North Carolina, exclusive of its choice of law rules. For any Disputes deemed not subject to binding individual arbitration, as provided in the section immediately below, you and Epic agree to submit to the exclusive jurisdiction of the Superior Court of Wake County, North Carolina, or, if federal court jurisdiction exists, the United States District Court for the Eastern District of North Carolina. You and Epic agree to waive any jurisdictional, venue, or inconvenient forum objections to such courts (without affecting either party's rights to remove a case to federal court if permissible), as well as any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract shall be construed against the drafter will not apply to this Agreement. This paragraph will be interpreted as broadly as applicable law permits.

12. Binding Individual Arbitration; Class Action Waiver

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

Most issues can be resolved quickly and amicably by contacting Epic customer support at <https://www.epicgames.com/customer-service>. But we understand that sometimes disputes can't be easily resolved by customer support. This Section explains how You and Epic agree to resolve those disputes, including (where applicable) by binding, individual arbitration.

Arbitration is an alternative dispute-resolution procedure that allows us to resolve issues without the formality of going to court. Any dispute between You and Epic is submitted to a neutral arbitrator (not a judge or jury) for fair and fast resolution. Arbitration is more efficient for both you and Epic.

12.1 Informal Resolution.

If you have an issue that our customer support can't resolve, prior to starting arbitration You and Epic agree to attempt to resolve the dispute informally to help get us to a resolution and control costs for both parties. You and Epic agree to make a good-faith effort to negotiate any dispute between us for at least 30 days ("Informal Resolution"). Those informal negotiations will start on the day You or Epic receive a written Notice of a Dispute in accordance with this Agreement.

You will send your Notice of Dispute to Epic Games, Inc., Legal Department, ATTN: NOTICE OF DISPUTE, Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A. Include your name, account name you use while playing Fortnite, address, how to contact you, what the problem is, and what you want Epic to do. If Epic has a dispute with You, Epic will send our Notice of Dispute to your registered email address and any billing address You have provided us.

If you reside in the European Union ("EU"), You may also be entitled to submit Your complaint to the European Commission's [Online Dispute Resolution \(ODR\) Platform](#). ODR allows EU consumers to resolve disputes related to the online purchases of goods and services without going to court.

If the dispute isn't resolved within by Informal Resolution or small-claims court (below), You or Epic may start an arbitration in accordance with this Agreement.

12.2 Small Claims Court

Instead of using Informal Resolution, You and Epic agree that You may sue us in small-claims court in your choice of the county where you live or Wake County, North Carolina (if you meet the requirements of small-claims court). We hope you'll try Informal Resolution first, but you don't have to before going to small-claims court.

12.3 Binding Individual Arbitration.

THE ARBITRATION PROCEEDINGS IN THIS SECTION WILL BE CONDUCTED ON AN INDIVIDUAL BASIS ONLY.

You and Epic agree that Disputes will be settled by binding individual arbitration conducted by the [Judicial Arbitration Mediation Services, Inc.](#) ("JAMS") subject to the U.S. Federal Arbitration Act and federal arbitration law and according to the [JAMS Streamlined Arbitration Rules](#) and Procedures effective July 1, 2014 (the "JAMS Rules") as modified by this Agreement.

This means that You and Epic agree to a dispute-resolution process where we submit any Dispute to a neutral arbitrator (not a judge or jury) that makes the final decision to resolve the Dispute. JAMS uses experienced professionals to arbitrate disputes, which helps You and Epic resolve any disputes fairly, but more quickly and efficiently than going to court. The arbitrator may award the same remedies to you individually as a court could, but only to the extent required to satisfy your individual claim.

The arbitrator's decision is final, except for a limited review by courts under the U.S. Federal Arbitration Act, and can be enforced like any other court order or judgment.

12.3.1 Disputes We Agree to Arbitrate:

You and Epic agree to submit all Disputes between You and Epic to individual binding arbitration. "Dispute" means any dispute, claim, or controversy (except those specifically exempted below) between You and Epic that relates to your use or attempted use of Epic's products or services and Epic's products and services generally, including without limitation the validity, enforceability, or scope of this Binding Individual Arbitration section.

You and Epic agree to arbitrate all Disputes regardless of whether the Dispute is based in contract, statute, regulation, ordinance, tort (including fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable theory.

The Informal Resolution and Arbitration sections do not apply to (1) individual actions in small-claims court; (2) pursuit of enforcement actions through a government agency if the law allows; (3) a complaint or remedy under the EU General Data Protection Regulation; (4) an action to compel or uphold any prior arbitration decision; (5) Epic's right to seek injunctive relief against You in a court of law to preserve the status quo while an arbitration proceeds; (6) claims of piracy, creation, distribution, or promotion of Cheats, and intellectual-property infringement, and (7) the enforceability of the Class Action Waiver clause below.

You and Epic agree that whether a dispute is subject to arbitration under this Agreement will be determined by the arbitrator rather than a court.

12.3.2 Arbitration Procedure:

To start an arbitration, review the JAMS Rules and follow the instructions for initiating an arbitration on the [JAMS](#) website. The party starting an arbitration must send JAMS a "Demand for Arbitration" (available on its website), pay a filing fee, and mail a copy of the Demand for Arbitration to the opposing party. You will send a copy to Epic Games, Inc., Legal Department, ATTN: ARBITRATION OF DISPUTE, Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A. Epic will send our copy to your registered email address and any billing address You have provided us.

The arbitration will be conducted by a single JAMS arbitrator selected with substantial experience in resolving intellectual-property and commercial-contract disputes. You and Epic both agree that the arbitration will be conducted in the English language and that the arbitrator will be bound by this Agreement.

If an in-person hearing is required, the hearing will take place either in Wake County, North Carolina, or where You reside; **you choose**.

The arbitrator (not a judge or jury) will resolve the Dispute. Unless You and Epic agree

otherwise, any decision or award will include a written statement stating the decision of each claim and the basis for the award, including the arbitrator's essential factual and legal findings and conclusions.

The arbitrator may only award legal or equitable remedies that are requested by You or Epic to satisfy one of our individual claims (that the arbitrator determines are supported by credible relevant evidence). The arbitrator may not award relief against Epic respecting any person other than You.

Any decision or award may be enforced as a final judgment by any court of competent jurisdiction or, if applicable, application may be made to such court for judicial acceptance of any award and an order of enforcement.

12.3.3 Arbitration Fees and Location:

If You start the arbitration, you must pay the JAMS filing fee required for consumer arbitrations.

In some situations, Epic will help with your fees to (hopefully) get us to a resolution quickly and fairly:

If the Dispute involves \$10,000 or less, Epic will pay all of the JAMS costs, including the fees you otherwise would have been required to pay.

If the above doesn't apply to You, but You demonstrate that arbitration costs will be prohibitive compared to litigation costs, Epic will pay as much of your JAMS costs as the arbitrator finds is necessary to prevent arbitration from being cost-prohibitive (as compared to the cost of litigation).

Even if Epic wins the arbitration and the applicable law or the JAMS Rules allow Epic to seek our portion of the JAMS fees from you, we won't.

The fee assistance offered above is contingent upon You bringing the arbitration claim in "good faith". If the arbitrator finds You brought an arbitration claim against Epic for an improper purpose, frivolously, or without a sufficient pre-claim investigation into the facts or applicable law, then the payment of all fees will be governed by the JAMS rules.

JAMS costs do not include your Attorneys' fees and costs and Attorneys' fees and JAMS costs are not counted when determining how much a dispute involves.

Epic won't seek our attorneys' fees or expenses from you in any arbitration, even if the law or the JAMS rules entitle us to do so. If you choose to be represented by an attorney, you will pay your own attorneys' fees and costs unless the applicable law provides otherwise.

12.3.4 Notice and Filing. If a Dispute must be arbitrated, You or Epic must start arbitration of the Dispute within two (2) years from when the Dispute first arose. If applicable law requires you to bring a claim for a Dispute sooner than two years after the Dispute first arose, you must

start arbitration in that earlier time period. Epic encourages You to tell us about a Dispute as soon as possible so we can work to resolve it. **The failure to provide timely notice shall bar all claims.**

12.3.5 Continuation in Effect. This Binding Individual Arbitration section survives any termination of this Agreement or Epic's provision of services to You.

12.3.6 Future Arbitration Changes. Although Epic may revise this Agreement in its discretion, Epic does not have the right to alter this agreement to arbitrate or the rules specified herein with respect to any Dispute once that Dispute arises.

12.4 Class Action Waiver.

To the maximum extent permitted by applicable law, You and Epic agree to only bring Disputes in an individual capacity and shall not:

seek to bring, join, or participate in any class or representative action, collective or class-wide arbitration, or any other action where another individual or entity acts in a representative capacity (e.g., private attorney general actions); or

consolidate or combine individual proceedings or permit an arbitrator to do so without the express consent of all parties to this Agreement and all other actions or arbitrations.

12.5 Severability.

If all or any provision of this Binding Individual Arbitration agreement is found invalid, unenforceable, or illegal, then You and Epic agree that the provision will be severed and the rest of the agreement shall remain in effect and be construed as if any severed provision had not been included. The sole exception is that if the Class Action Waiver is found invalid, unenforceable, or illegal, You and Epic agree that it will not be severable; this entire Binding Individual Arbitration section will be void and unenforceable and any dispute will be resolved in court subject to the venue and choice of clauses specified in this Agreement. Under no circumstances shall arbitration be conducted on a class basis without Epic's express consent.

12.6 Your 30-Day Right to Opt Out

You have the right to opt out of and not to be bound by the arbitration and class action waiver provisions set forth in this Agreement. To exercise this right, You must send written notice of your decision to the following address: Epic Games, Inc., Legal Department, ATTN: ARBITRATION OPT-OUT, Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A. Your notice **must** include your name, mailing address, and account name you use while playing Fortnite, and state that you do not wish to resolve disputes with Epic through arbitration. **To be effective, this notice must be postmarked or deposited within 30 days of the date on which you first accepted this Agreement unless a longer period is required by applicable law; otherwise you will be bound to arbitrate disputes in accordance with this section.** You are responsible for ensuring that Epic receives your opt-out notice, so you may wish to send it by a

means that provides for a delivery receipt. If you opt out of these arbitration provisions, Epic will not be bound by them with respect to Disputes with you.

13. U.S. Government Matters

The Software is a “Commercial Item” (as defined at 48 C.F.R. §2.101), consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” (as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable). The Software is being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to other licensees under this Agreement.

You agree to comply with all applicable federal and foreign laws, regulations, and rules, and complete any required undertakings. You agree not to use, export, re-export, or download the Software or Services into (or to a national or resident of) any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Table of Denial Orders. You represent and warrant that you are not located in, under the control of, or a national or resident of any U.S. restricted or prohibited country or on any U.S. restricted or prohibited list.

14. Amendments of this Agreement

Epic may issue an amended Agreement, Terms of Service, or Privacy Policy at any time in its discretion by posting the amended Agreement, Terms of Service, or Privacy Policy on its website or by providing you with digital access to amended versions of any of these documents when you next access the Software. If any amendment to this Agreement, the Terms of Service, or Privacy Policy is not acceptable to you, you may terminate this Agreement and must stop using the Software. Your continued use of the Software will demonstrate your acceptance of the amended Agreement and Terms of Service as well as your acknowledgement that you have read the amended Privacy Policy.

15. No Assignment

You may not, without the prior written consent of Epic, assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement, and any attempt without that consent will be null and void. If restrictions on transfer of the Software in this Agreement are not enforceable under the law of your country, then this Agreement will be binding on any recipient of the Software. Epic may at any time assign, transfer, charge, or sub-contract all or any of its rights or obligations under this Agreement.

16. Definitions

As used in this Agreement, the following capitalized words have the following meanings:

“**Cheat Detection**” means functionality intended to identify Cheats.

“**Cheats**” means programs, methods, or other processes which may give players an unfair

competitive advantage in the Software.

“Confidential Information” means any non-public information related to the Software, including without limitation information related to gameplay or other content, Game Currency, Content, the Services, your own feedback and comments, and the feedback or comments of any other licensee of the Software or any Epic representative.

“Content” means any virtual items, virtual environments (such as islands), or other content that Epic makes available for you to access or download through or in connection with the Software, and expressly includes Licensed Music, and UGC that has been licensed to us by our users.

“Epic” means, depending on the location of your primary residence:

a. Epic Games, Inc., a Maryland Corporation having its principal business offices at Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A.; or

b. Epic Games International S.à r.l., a Luxembourg Société à Responsabilité Limitée, located at Atrium Business Park, 33 rue du Puits Romain, L8070 Bertrange, Grand-Duchy of Luxembourg, acting through its Swiss branch, having its principal business offices at Platz 3, 6039 Root, Switzerland.

“Feedback” means any feedback or suggestions that you provide to Epic regarding the Software, Services or other Epic products and services.

“Services” means any services made available to you through the Software, including services to acquire, maintain and use Game Currency and Content.

“Software” means the proprietary software application known as Fortnite, and any patches, updates, and upgrades to the application, and all related content and documentation made available to you by Epic under this Agreement, including but not limited to all software code, titles, themes, objects, characters, names, dialogue, catch phrases, locations, stories, artwork, animation, concepts, sounds, audio-visual effects, methods of operation, and musical compositions that are related to the application, and any copies of any of the foregoing. Software specifically includes all Game Currency and Content for which you have paid the associated fee or otherwise acquired a license under Section 4.

17. Miscellaneous

This Agreement and any document or information referred to in this Agreement constitute the entire agreement between you and Epic relating to the subject matter covered by this Agreement. All other communications, proposals, and representations with respect to the subject matter covered by this Agreement are excluded.

The original of this Agreement is in English; any translations are provided for reference purposes only. It is the express wish of the parties that these Terms and all related documents have been drawn up in English. Les parties déclarent qu'elles ont demandé et par les présentes confirment

leur desir expr s que cette convention soit r dige e en anglais. You waive any right you may have under the law of your country to have this Agreement written or construed in the language of any other country.

This Agreement describes certain legal rights. You may have other rights under the laws of your jurisdiction. This Agreement does not change your rights under the laws of your jurisdiction if the laws of your jurisdiction do not permit it to do so. Limitations and exclusions of warranties and remedies in this Agreement may not apply to you because your jurisdiction may not allow them in your particular circumstance. In the event that certain provisions of this Agreement are held by a court or tribunal of competent jurisdiction to be unenforceable, those provisions shall be enforced only to the furthest extent possible under applicable law and the remaining terms of this Agreement will remain in full force and effect.

Any act by Epic to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity.

You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated.

Epic's obligations are subject to existing laws and legal process, and Epic may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.

18. Additional Platform Terms

18.1 Sony PlayStation Users:

The following additional terms and conditions apply with respect to Software available for use on PlayStation devices that you own or control:

Please note that Epic will store Sony Entertainment Network account information, including your email address and Online ID, as explained in Epic's Privacy Policy. Epic may allow its users to search for other Epic accounts by their SEN account and other Epic users may send you friend requests. Your SEN account privacy settings will not apply to your Epic account.

In no event may you convert any Software virtual currency into real currency, tangible goods, or in-kind consideration, and you are expressly forbidden from engaging in off-platform sales or exchanges of such virtual currency, such as at eBay or other auction sites.

For SIEA users: Purchase and use of items are subject to the Network Terms of Service and User Agreement. This online service has been sublicensed to you by Sony Interactive Entertainment America.

For SIEE users: Any content purchased in an in-game store will be purchased from Sony Interactive Entertainment Network Europe Limited ("SIENE") and be subject to PlayStationTM Network Terms of Service and User Agreement which is available on the PlayStation[®] Store.

Please check usage rights for each purchase as these may differ from item to item. Unless otherwise shown, content available in any in-game store has the same age rating as the game.

18.2 Microsoft Xbox Users.

The following additional terms and conditions apply with respect to Software available for use on Xbox Live devices that you own or control:

Neither Microsoft Corporation nor any of its affiliates (collectively, “**Microsoft**”) have any maintenance or support obligations with respect to the Software or Services.

Nothing in this Agreement shall govern or change, in any way, your relationship with Microsoft under any agreements between you and Microsoft, including the Xbox Live terms of use.

Further, to the maximum extent permitted by applicable law, the aggregate liability of the Epic Parties (other than Microsoft) arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services will not exceed the total amounts you have paid (if any) to Epic for the Software (including any Game Currency or Content) during the twelve (12) months immediately preceding the events giving rise to such liability and Microsoft shall have no liability to you arising out of or in connection with this Agreement or the Software (including any Game Currency or Content) or Services. These limitations and exclusions regarding damages apply even if any remedy fails to provide adequate compensation.

18.3 Apple iOS Users.

The following additional terms and conditions apply with respect to Software available for use on any Apple, Inc. (“Apple”) iPhone or iPad devices that you own or control:

You acknowledge that your agreement is not with Apple. Epic, not Apple, is solely responsible for the Software and the content thereof.

Your use of the Software shall be subject to the terms of this Agreement and as permitted by the Usage Rules set forth in the App Store Terms and Conditions as of the date you download or first use the Software (which you acknowledge you have had the opportunity to review).

You agree that Apple has no maintenance or support obligations with respect to the Software or Services.

You acknowledge and agree that Apple is not responsible for any product warranties, whether express or implied by law, with respect to the Software or Services. If you are legally entitled to a warranty in your country or other jurisdiction, then in the event of any failure of the Software or Services to conform to such required warranty, you may notify Apple, and Apple will refund the purchase price, if any, paid by you to Apple for the Software. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Software or Services, and any other claims, losses, liabilities, damages, costs or

expenses attributable to any failure to conform to such required warranty will be Epic's sole responsibility. However, you understand and agree that in accordance with this Agreement, Epic has disclaimed all warranties of any kind with respect to the Software and Services, and therefore, there are no warranties applicable to the Software or Services, except those required by law.

As between Apple and Epic, Epic, not Apple, is responsible for addressing your or any third party's claims relating to the Software or Services or your possession and/or use of the Software or Services, including, but not limited to: (i) product liability claims; (ii) any claim that the Software or Services fail to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. In the event of any third party claim that the Software or Services or your possession and use of the Software or Services infringes that third party's intellectual property rights, Epic, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim (if and to the extent required under this Agreement).

You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated. Notwithstanding the foregoing, Apple, and Apple's subsidiaries, are third party beneficiaries of this Agreement, and upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third party beneficiary thereof.

Any end-user questions, complaints or claims with respect to the Software should be directed to help@fortnite.com.

18.4 Samsung GALAXY Users.

The following additional terms and conditions apply with respect to Software available for use on the Samsung GALAXY devices that you own or control:

The Software may provide you the ability to make payments through Samsung's In-App-Purchase APIs. In the event that you make a payment using Samsung's In-App-Purchase, the Samsung GALAXY Apps Terms and Conditions that you entered into with Samsung Electronics Co., Ltd. (or its affiliates) regarding the use of Samsung's In-App-Purchase and its equivalent terms shall apply to the payment and any refunds related to such payment.